

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

IN RE JAMES C MARCELLO

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Civil No. 06-04-B-W

DECISION RECOMMENDING DISMISSAL

On January 11, 2006, James Marcello filed a pro se pleading entitled: "MOTION TO NULLIFY AN ORDER OF STATE COURT OBTAINED BY FRAUD AND RENDERED WITHOUT JURISDICTION." He named the Town of Stetson as the plaintiff and himself as defendant. He also filed a pleading captioned: "JURISDICTIONAL STATEMENT." This one page filing purported to explain how a federal court could take jurisdiction over a judgment rendered in the state court. I entered an order informing Marcello that he could not bring an action with the Town of Stetson as the plaintiff and himself as the defendant. I gave him until January 18, 2006, to file an amended complaint in this court explaining who he was suing and what relief his was seeking. I also indicated that this court could not nullify an order of the state court. (See Docket No. 4.)

Marcello has filed an objection to that order styled as a: REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO NULLIFY AN ORDER OF STATE COURT." (Docket No. 5.) Citing Northern Pac. R. Co. v. Kurtzman, 82 Fed. 241, Marcello maintains that federal courts have jurisdiction to nullify a judgment of a state court that is obtained by fraud or rendered without jurisdiction. He attaches a copy of a November 23, 2005, order from a state court that holds Marcello in contempt of

an April 2, 1998, order that required him to either discontinue use of his Stetson, Maine mobile home or to install a foundation.

If Marcello wishes to appeal this decision holding him in contempt he must proceed with his remedies in the state court and, if still unsatisfied, seek review from the United States Supreme Court. He cannot get a federal court to review this order by filing -- as a defendant in the state proceeding -- a motion in this court. Marcello has not filed a complaint in this court. Accordingly I recommend that the Court **DISMISS** this case.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

January 17, 2006.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge